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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/337,789	06/22/1999	FRIEDER MAERZ	1/1090	9471

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EXAMINER

WANG, SHENGJUN

ART UNIT PAPER NUMBER

1617

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted August 28, 2003 is acknowledged.

1. Newly submitted claim 17-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The original claims 1-16 are directed to a pharmaceutical composition, classified in claims 514, subclass 401, 777, 854. The newly submitted claims 17-36 are directed to an inhaler, classified in class 128, subclass 203.12+.
2. Inventions claims 1-16 and claims 17-36 are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation, and different function.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. Therefore, the amendment filed on August 28, 2003 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because of the reasons discussed above.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is

Art Unit: 1617

longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Primary Examiner



Shengjun Wang

January 9, 2004

1.